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Clash on Disclosures: Reagan Tactics

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WASHINGTON, Dec. 21 — While the Reagan Administration has increased its pressure on news organizations not to publish classified information, it has also been moving more quietly to build a legal basis for imprisoning Government employees who give reporters such information.

News Analysis

This Administration, even more than earlier ones, has been frustrated by the publication of Government secrets and its inability to stop the disclosures. Congress last year blocked its plan to subject more Government employees to polygraph, or lie-detector, tests and lifelong censorship, and it is unclear whether a new overall strategy has been developed to curb disclosure of official secrets.

Recently, in addition to direct appeals to news executives not to publish particular information, the Administration has undertaken an effort to set a precedent for subjecting Government sources to the same penalties as foreign spies. That effort involves a criminal prosecution of a Navy intelligence analyst and part-time journalist who is accused of selling classified satellite reconnaissance photographs to a British military magazine.

An additional tack was suggested earlier this month by Fred C. Iklé, Under Secretary of Defense for Policy, who said the Administration was likely to seek legislation making it easier to punish officials who gave classified information to news organizations.

Fight Against Disclosures

"We have decided to fight it on all fronts," he said of the stream of disclosures.

Although an internal Government report suggested that the Government had legal authority to prosecute reporters who published classified information, the Administration has shown no interest in doing so.

Government lawyers say such prosecutions would raise major, unresolved First Amendment issues and would be politically controversial, and that it would be difficult to prove that a reporter knew that information he had received from an official was classified.

Rather than resorting to legal compulsion, Defense Secretary Caspar W. Weinberger this week asked some news organizations to censor themselves by withholding publication of details of the next space shuttle mission.

When The Washington Post later published some details of the military mission, Mr. Weinberger suggested that its article had directly damaged national security. The Post said the article posed no security risk, that it was based largely on information already made public and that it had received no request from Mr. Weinberger not to publish the report.

In comments since then, military officials seemed particularly annoyed that The Post was not willing to defer to their assessment of what would harm national security.

Earlier administrations have persuaded major news organizations to withhold publication of particular information on national security grounds. But such requests have been rare in recent decades, and a few have been defied on the basis of decisions that the material's newsworthiness outweighed any danger it presented.

Confrontation in 1971

In 1971, for example, The New York Times and other news organizations published the classified Pentagon Papers study of the Vietnam War despite Nixon Administration objections that this would endanger national security. The Supreme Court rejected a Government lawsuit seeking to prohibit publication.

Since that time the Government has concentrated its efforts to keep its secrets by stopping disclosures at their source. But officials acknowledge they have had little success, both in this and in prior administrations. The sources are hard to catch, and no Government employee has ever been convicted of a crime for disclosing classified information to a reporter.

In addition, high-ranking officials frequently disclose classified information to reporters in order to further Administration policy or their own bureaucratic priorities.

A 1982 report by an interdepartmental group of Administration lawyers found that the Federal Bureau of Investigation was reluctant to look for the source of disclosures, in part because such inquiries "frequently involve high-ranking Government officials who may be uncooperative."

It went on, "Sometimes a time-consuming investigation is undertaken, only to reveal that the source of the leak was a White House or Cabinet official who was authorized to disclose the information."

The report advocated sweeping new legislation to make it a crime for a Government employee to disclose any classified information to a reporter or to anyone else without authorization.

There are a few specific, narrow laws on the books that appear to make it a crime to disclose or publish classified information about atomic weapons, communications intelligence, cryptographic activities and the identities of undercover intelligence agents.

But the United States has no such sweeping criminal official secrecy legislation as the 1982 report recommended, and no specific plans to seek such legislation have been made public.

Meanwhile, however, the Justice Department is pushing in a pending case for a judicial interpretation of World-War-I vintage espionage laws that would have much the same effect as a sweeping new official secrets act.

In October it charged Samuel Loring Morison, a Navy intelligence analyst who was a part-time journalist, with espionage and theft of Government property for selling classified satellite reconnaissance photographs of a Soviet aircraft carrier under construction to a British military magazine.

There was no allegation that Mr. Morison was a spy for a foreign government or intended to harm national security. He has pleaded not guilty and his lawyers have moved to dismiss the prosecution as unconstitutional.

Earlier Case Was Dismissed

The only previous such case was brought by the Nixon Administration against Daniel Ellsberg and Anthony Russo for providing the Pentagon Papers to The New York Times and other newspapers in 1971. That case was dismissed because of prosecutorial misconduct.

The 1982 internal Administration report said two general provisions of the espionage laws "would be violated by the unauthorized disclosure to a member of the media of classified documents or information relating to the national defense."

These two sections "could also be used to prosecute a journalist who knowingly receives and publishes classified documents or information," the report said.

The American Civil Liberties Union has challenged this interpretation. It says the general espionage laws were designed only to bar clandestine transfers of Government secrets to foreign powers, and would be unconstitutional if interpreted to prohibit disclosures of classified information to the news media.

This debate could be resolved by the Morison case, with far-reaching consequences for the Government's power to suppress information it does not want foreign adversaries — or the American public — to have.

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